

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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|---------------------------|---|---------------------------------------|
| AARON THOMAS,             | ) |                                       |
|                           | ) |                                       |
| Plaintiffs,               | ) |                                       |
|                           | ) |                                       |
| v.                        | ) | CIVIL ACTION NO. <u>2:14-cv-02496</u> |
|                           | ) |                                       |
| CIGNA HEALTHCARE SERVICES | ) |                                       |
|                           | ) |                                       |
| Defendants.               | ) |                                       |

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**NOTICE OF REMOVAL**

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**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION**

Pursuant to 28 U.S.C. § 1441(a), *et seq.*, Defendant, Connecticut General Life Insurance Company and Cigna Health and Life Insurance Company (collectively “Defendant”), improperly named as Cigna Healthcare Services<sup>1</sup>, files this Notice of Removal of this action from State Court to this Court and respectfully state as follows:

1. On May 15, 2014, Plaintiff, Aaron Thomas (“Plaintiff”), commenced an action against Defendant in the Court of General Sessions of Shelby County, Tennessee, under the style *Aaron Thomas v. Cigna Healthcare Services*, Docket No. 1687391 (The “Civil Action”). The Civil Action is still pending in the State Court.

2. Plaintiff initially served the Department of Commerce and Insurance pursuant to T.C.A. § 56-2-504 or § 56-2-506. Service on the Department of Commerce

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<sup>1</sup> “CIGNA Healthcare Services” is not a corporate entity or even an insurance company. Connecticut General Life Insurance Company is the underwriter of the ERISA Plan of which Plaintiff is a participant and is the only potential Cigna entity that could potentially be a Defendant in this matter.

and Insurance was ineffective, because Cigna Healthcare Services is a non-existent entity. The Department of Commerce and Insurance forwarded the Civil Warrant via certified mail to Cigna Healthcare of Tennessee, Inc. on May 27, 2014.

3. Service on Cigna Healthcare of Tennessee, Inc. was also ineffective, because Cigna Healthcare of Tennessee, Inc. is not a proper party and is not connected to Plaintiff or his claims. Plaintiff is a participant in an ERISA health benefit plan, which is self-insured by his employer, Estes Express Lines. The Defendant is the Plan's underwriter.

4. To date Defendant has never been served, but instead received a copy of the Summons and Civil Warrant in the Civil Action when it was notified of the lawsuit by Cigna Healthcare of Tennessee, Inc., which received the Summons and Civil Warrant on May 28, 2014. A copy of the Certified Mail Delivery Confirmation on May 28, 2014 is attached as Exhibit A. Copies of the Summons and Civil Warrant served on Cigna Healthcare of Tennessee, Inc. are attached hereto as Exhibit B. The documents which comprise Exhibit B constitute all process, pleadings and orders served on Cigna Healthcare of Tennessee, Inc. and provided to Defendant in the Civil Action to date.

5. By filing a Notice of Removal in this matter, Defendant does not waive its rights to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and Defendant specifically reserves its rights to assert any defenses and/or objections to which it may be entitled.

6. Removal is timely in this matter in that:

- (a) Pursuant to 28 U.S.C. § 1446(b), Defendant is required to file its Notice of Removal within thirty days after service of the Civil Warrant.

- (b) Pursuant to 28 U.S.C. § 1446(b), Defendant must file its Notice of Removal on or before June 27, 2014 (30 days after service of the Civil Warrant).
- (c) Accordingly, Defendant, by timely filing its Notice of Removal on or before June 27, 2014, has complied with the provisions of 28 U.S.C. § 1446(b).

7. Defendant, to date, has made no appearance in the Civil Action in State Court.

8. The Civil Action is one of which this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and removal jurisdiction pursuant to 28 U.S.C. § 1441 in that:

- (a) The Civil Warrant asserts a claim to recover benefits, to enforce rights, and/or to clarify rights to future benefits under the terms of a group health benefit plan established by Plaintiff's employer, Estes Express Lines ("the Plan") (copy attached as Exhibit C), which constitutes a plan document pertaining to an "employee welfare benefit plan" which is governed exclusively by the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. § 1001, *et seq.*;
- (b) The Plan is established or maintained by an employer as defined by ERISA, and plaintiff purports to be a participant and beneficiary of the Plan as defined by ERISA, 29 U.S.C. § 1002(1);
- (c) Plaintiff's sole remedy, if any, for losses suffered and benefits claimed arises under ERISA, 29 U.S.C. § 1132(a)(1)(B), and accordingly, any state law claim for benefits is preempted and displaced by the civil enforcement provision of ERISA, Section 502, 29 U.S.C. § 1132, *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); and
- (d) This Court has jurisdiction of plaintiff's claim for benefits under the civil enforcement provision of ERISA, 29 U.S.C. § 1132(e)(1), which gives the Court jurisdiction without respect to the amount in controversy or the citizenship of the parties.

9. Defendant has filed this Notice prior to the expiration of thirty (30) days following the receipt of a copy of the Summons and Civil Warrant.

10. Defendant will give written notice to Plaintiff and will file a Notice of Filing of Notice of Removal with the Clerk of the General Sessions Court of Shelby County, Tennessee. Defendants attach a copy of the Notice of Filing of Notice of Removal as Exhibit D.

WHEREFORE, Defendant prays that the Civil Action now pending against it in the Court of General Sessions of Shelby County, Tennessee, be removed therefrom to this Court.

DATED this 1st day of July, 2014.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

s/Luke P. Cantrell

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the following via prepaid U.S. Mail this 1st day of July, 2014.

Lewis K. Garrison, Sr.  
145 Court Ave., #402  
Memphis, TN 38103

s/Luke P. Cantrell

Luke P. Cantrell